



August 9, 1999

Ms. Linda Cloud  
Executive Director  
Texas Lottery Commission  
P.O. Box 16630  
Austin, Texas 78761-6630

OR99-2234

Dear Ms. Cloud:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 126306.

The Texas Lottery Commission (the "commission") received a written request for certain records pertaining to the commission's "most recent Emergency Solicitation for Price Quotations for Instant Tickets and Services." You state that much of the requested information has been provided to the requestor. You seek to withhold certain other information pursuant to section 552.101 of the Government Code in conjunction with section 466.022 of the Government Code.

Section 466.022(b) makes confidential, among other things, 1) security plans and procedures of the commission designed to ensure the integrity and security of the operation of the lottery and 2) information of a nature that is designed to ensure the integrity and security of the selection of winning tickets or numbers in the lottery, other than information describing the general procedures for selecting winning tickets or numbers. We have reviewed the portions of the proposal that you have marked as coming within the confidentiality of section 466.022(b). Because you state that the information you have marked "would divulge the security features currently used and those to be considered for use involving scratch off tickets," we conclude that the commission may withhold the marked portions of the proposal pursuant to section 466.022 of the Government Code.

You have also requested a decision from this office pursuant to section 552.305 of the Government Code with regard to "Part VIII" of the proposal submitted by Scientific Games, which pertains to "Minority Participation." Section 552.305 authorizes governmental bodies to rely on the arguments of a third party to demonstrate how the requested information

implicates the party's privacy or proprietary interests and, thus, is excepted from required public disclosure. In accordance with the practice this office established in Open Records Decision No. 575 (1990), this office notified representatives of Scientific Games that we received your request for an open records decision regarding matters affecting their proprietary interests. In our notification, this office requested an explanation as to why the information at issue was excepted from public disclosure, with the caveat that unless we received such explanation, this office would instruct the commission to disclose the information unless the information is otherwise excepted from required public disclosure.

Scientific Games timely responded to our notice and contends that "Part VIII" of their proposal is excepted from required public disclosure pursuant to section 552.104 of the Government Code. Section 552.104 of the Government Code protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Section 552.104 was not intended to protect business entities that are in competition in the private sector. The primary purpose of section 552.104 is to protect the *government's* purchasing interests by preventing a competitor or bidder from gaining an unfair advantage over other competitors or bidders. Because the commission has not raised section 552.104 on its own behalf, we deem this exception as being waived. Consequently, section 552.104 does not apply to "Part VIII" of the proposal. Scientific Games failed to establish that the information constitutes confidential information protected by any other exceptions under the act. This information, therefore, must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/RWP/nc

Ref.: ID# 126306

Encl. Submitted documents

cc: Mr. Rolando Pablos  
Oberthur Gaming Technologies  
9999 Westover Hills Boulevard  
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(w/o enclosures)

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Vice President and General Counsel  
Scientific Games International  
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(w/o enclosures)